

### MARKET SETTLEMENT AGREEMENT

THIS MARKET SETTLEMENT AGREEMENT ("Agreement") is entered into by and among the School District of Palm Beach County, Florida (the "District"); The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University (the "University"); Wireless Broadcasting Systems of West Palm Beach, Inc. ("WBS-WP"); and People's Choice TV, Inc. ("PCTV").

WHEREAS, the District is the licensee of Instructional Television Fixed Service ("ITFS") stations KZB-28 on the A group at Belle Glade, Florida; KZB-29 on the G group at Riviera Beach, Florida; WHR-973 on channel G3 at West Palm Beach, Florida; WHR-994 on channels G2-G3 at West Palm Beach, Florida; KZB-30 on channels H1-H3 at Loxahatchee, Florida; and KHU-90 on the E group at Boynton Beach, Florida, which is the subject of a Petition for Displacement to the D group channels.

WHEREAS, the University is the licensee of ITFS stations WLX-269 on the A group at Palm Beach, Florida; WHR-877 on the A group at Boca Raton, Florida; WHR-894 on the A group at Boca Raton, Florida; WHR-895 on the A group at Boca Raton, Florida, WHR-896 on the B group at Boynton Beach, Florida; WHR-897 on the C group at Ft. Lauderdale, Florida; WHR-901 on the C group at Palm Beach, Florida; and is the applicant in File No. BPLIF-920814DB for the D group channels at Palm Beach Florida;

WHEREAS, the District and the University currently use some of their ITFS channels either as repeaters or as relays;

WHEREAS, PCTV is the conditional licensee of Multichannel Multipoint Distribution Service ("MMDS") station WMI841 on the E group channels at West Palm Beach, Florida;

WHEREAS, WBS-WP is a wireless cable operator and the lessee of the District's and the University's excess capacity, which WBS-WP will use in a wireless cable television system it is developing to serve the West Palm Beach metropolitan area. WBS-WP has affiliates presently operating similar systems in Melbourne and Fort Pierce, Florida; Sacramento, California; Boise, Idaho; and acquiring a system in Yakima, Washington;

WHEREAS, PCTV cannot construct or commence operating its E group station WMI841 until the District ceases operation of its E group station KHU-90;

WHEREAS, on December 29, 1993, PCTV and WBS-WP filed a Petition for Displacement and Application (the "Displacement Application") to modify KHU-90 to specify operation on the D group channels;

WHEREAS, the Displacement Application is mutually exclusive with the University's D group application (File No. BPLIF-920814DB), making grant of both applications impossible;

WHEREAS, the parties wish to reach a mutually agreeable settlement of their differences;

WHEREAS, the parties recognize that the microwave spectrum in the West Palm Beach metropolitan area could be used more efficiently by centralizing the origination point for all channels and eliminating use of ITFS frequencies as repeaters and/or

relay stations, and allowing commercial use of the E group channels and the H channels;

WHEREAS, the District and the University each recognizes that its ITFS purposes can more efficiently be served by a collocated operation of ten channels each at fifty watts, located on the District's Boynton Beach transmit tower (the "Collocation Site");

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. To accommodate the settlement, PCTV, WBS-WP, the University and the District agree to resolve the mutually exclusive proposals for the D group ITFS channels by dividing the four channels between the University and the District. Accordingly, the University agrees to modify its application in File No. BPLIF-920814DB to specify operation on channels D3-D4 only, and the WBS-WP and PCTV agree to the modification of the Displacement Application to specify operation of KHU-90 on channels D1-D2 only. Furthermore, the District agrees not to object to displacement of station KHU-90 to channels D1-D2, and agrees to relocate the D1-D2 facilities to the Collocation Site.

2. To accommodate the settlement, the University will submit to the FCC for cancellation its authorizations for stations WLX-269, WHR-877, and WHR-894. The University will retain its B group and C group licenses for WHR-896 and WHR-901, respectively, and these facilities will be moved to the Collocation

Site so that more spectrum-efficient service to all of its receive sites is possible. The University will also retain its authorizations for stations WHR-895 and WHR-897, which stations will be used in the Ft. Lauderdale area, configured so as not to cause harmful interference to stations operating from the Collocation Site.

3. To further accommodate the settlement, the District will modify its G group authorization for KZB-29 and its A-group authorization for KZB-28 to collocate these facilities with WBS-WP's system. The District will submit to the FCC for cancellation its licenses for WHR-973 and WHR-994. Further, the District agrees to the assignment of its H channel facility (KZB-30) to WBS-WP, and the relocation of the H channel facility to the Collocation Site.

4. To further accommodate the settlement and eliminate potential interference, PCTV agrees to the relocation of its E group facility WMI841 to the Collocation Site.

5. The parties agree to cooperate with one another with respect to the filing of the applications and other papers required by this Agreement and agree not to interpose any objection to any filing which is consistent with this Agreement.

6. The parties agree to file the FCC applications required to effectuate this Agreement on or about the same day and to seek concurrent processing for all such applications. The parties agree that the modifications contemplated by the settlement will be installed concurrently so as to complete installation and

testing efficiently. The parties agree to coordinate the cut-over date with the University's and the District's educational schedules.

7. Whenever the context of this Agreement so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

8. This Agreement may not be modified or amended, except by a written instrument signed by each of the parties designating specifically the terms and provisions so modified and amended.

9. Each signatory to this Agreement represents that he or she has full legal authority to enter into, execute and perform the obligations of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

10. This Agreement may be signed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this  
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-  
tion of the State of Florida, on behalf  
of Florida Atlantic University

Date: 5/12/95

By Charles B. Reed  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: \_\_\_\_\_

By \_\_\_\_\_  
Jody Gleason, Chairman

Date: \_\_\_\_\_

By \_\_\_\_\_  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
Michael J. Specchio, President

LCK/id  
c:\wp\2379F\contract.

IN WITNESS WHEREOF, the parties hereto have executed this  
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-  
tion of the State of Florida, on behalf  
of Florida Atlantic University

Date: \_\_\_\_\_

By \_\_\_\_\_  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: April 26, 1995

By Jody Gleason  
Jody Gleason, Chairman

Date: April 27, 1995

By C. Monica Uhlhorn  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
Michael J. Specchio, President

LCK/ld  
c:\wp\2379F\contract.

IN WITNESS WHEREOF, the parties hereto have executed this  
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-  
tion of the State of Florida, on behalf  
of Florida Atlantic University

Date: \_\_\_\_\_

By \_\_\_\_\_  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: \_\_\_\_\_

By \_\_\_\_\_  
Jody Gleason, Chairman

Date: \_\_\_\_\_

By \_\_\_\_\_  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: 4/20/95

By Jennifer Richter  
Jennifer L. Richter, Vice-President  
PEOPLE'S CHOICE TV, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
Michael J. Specchio, President

LCK/ld  
c:\wp\2379F\contract.



IN WITNESS WHEREOF, the parties hereto have executed this  
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-  
tion of the State of Florida, on behalf  
of Florida Atlantic University

Date: \_\_\_\_\_ By \_\_\_\_\_  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: \_\_\_\_\_ By \_\_\_\_\_  
Jody Gleason, Chairman

Date: \_\_\_\_\_ By \_\_\_\_\_  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: \_\_\_\_\_ By \_\_\_\_\_  
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: 5/22/95 By \_\_\_\_\_  
Michael J. Specchio, President

LCK/id  
c:\wp\2379F\contract.

Declaration of Michael J. Specchio

I, Michael J. Specchio, declare follows:

1. I am President of People's Choice TV, Inc., which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;

2. I certify that no monetary consideration was exchanged among the parties in consideration for the settlement; and

3. I certify that People's Choice TV, Inc. did not file any of the affected applications in order to procure the Settlement.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

  
\_\_\_\_\_  
Michael J. Specchio, President

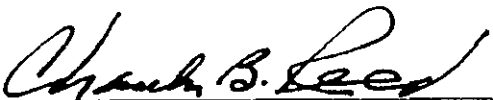
Date: 5/22/95

Declaration of Charles B. Reed

I, Charles B. Reed, declare follows:

1. I am Chancellor of The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;
2. I certify that no monetary consideration was exchanged among the parties in consideration for the settlement; and
3. I certify that The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University did not file any of the affected applications in order to procure the Settlement.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

  
\_\_\_\_\_  
Charles B. Reed, Chancellor

Date: 5/12/95


Declaration of Jody Gleason

I, Jody Gleason, declare as follows:

1. I am Chairman of The School Board of the School District of Palm Beach County, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;
2. I certify that neither the School District nor any of its principals has received monetary consideration for the settlement; and
3. I certify that The School District of Palm Beach County did not file any application in order to procure the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26<sup>th</sup> day of April, 1995.

  
\_\_\_\_\_  
Jody Gleason, Chairman  
The School Board of Palm Beach County,  
Florida

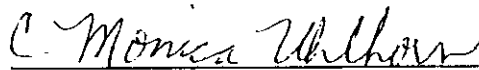
Declaration of C. Monica Uhlhorn

I, C. Monica Uhlhorn, declare as follows:

1. I am Superintendent of The School District of Palm Beach County, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;
2. I certify that neither the School District nor any of its principals has received monetary consideration for the settlement; and
3. I certify that The School District of Palm Beach County did not file any application in order to procure the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27<sup>th</sup> day of April, 1995.



C. Monica Uhlhorn, Superintendent  
The School District of Palm Beach County,  
Florida

## **EXHIBIT 2**

**Letter from Counsel to the FCC  
May 30, 1995  
Summary of Marketwide Settlement**

VINCENT A. PEPPER  
ROBERT F. CORAZZINI  
PETER GUTMANN  
JOHN F. GARZIGLIA  
NEAL J. FRIEDMAN  
ELLEN S. MANDELL  
HOWARD J. BARR  
LOUISE CYBULSKI  
L. CHARLES KELLER  
MICHAEL J. LEHNHUEHL  
SUZANNE C. SPINK  
\* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI

L.L.P.

ATTORNEYS AT LAW

200 MONTGOMERY BUILDING

1776 K STREET, NORTHWEST

WASHINGTON, D.C. 20006

(202) 296-0600

GREGG P. SMALL  
E. THEODORE MALLYCK  
OF COUNSEL

FREDERICK W. FORD  
1909-1986

TELECOPIER (202) 296-5572  
INTERNET: PEPCOR@COMMLAW.COM

May 30, 1995

**Hand Delivery**

Mr. Melvin Collins  
Federal Communications Commission  
1919 M Street, N.W., Room 700  
Washington, D.C. 20554

**Re: West Palm Beach ITFS Settlement**

Dear Melvin:

On Thursday, May 25, we met with Barbara Kreisman and Clay Pendarvis to present the West Palm Beach ITFS settlement. Clay indicated that you would be the engineer handling the matter. Enclosed is a summary of the settlement. The necessary ITFS applications were filed on May 24, and I believe Clay has already provided you with copies of them.

In our meeting, Clay agreed in principle that all of these applications should be exempt from the cut-off rules because all are necessary to the settlement. Although the MX applications exist only for the D group, the channel reorganization and collocation plan in its entirety is essential to the settlement; without it, the D group settlement will fail. Further, all the affected stations are licensed to the same two parties whose mutually-exclusive D group applications are resolved by the settlement. Therefore, all the applications fall within the scope of footnote 47 and are cut-off exempt.

As to timing issues, Clay believed it would be possible to put out a 30-day public notice of the settlement (for petitions only) early this week. Clay also stated that the applications would probably be granted shortly after the end of the 30-day period. The parties hope to have the reconfigured system built in advance of October 9, 1995, which is the current construction deadline for the E group MMDS facility (now blocked by a grandfathered ITFS facility). To do so, grants would be necessary by September 1, 1995. This will allow us to avoid burdening the Commission with additional paperwork in the form of an application for further extension of the E group construction deadline.

Mr. Melvin Collins  
May 30, 1995  
Page 2

If there is any additional information you need regarding these matters, please do not hesitate to contact the parties' representatives, who are identified at the bottom of the attached sheet.

Best regards.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Chuck Keller", followed by a horizontal line.

L. Charles Keller  
Counsel to Wireless Broadcasting  
Systems of America, Inc., and  
People's Choice TV, Inc.

Enclosures

cc: Clay C. Pendarvis, Esq. (by hand)  
William D. Wallace, Esq.  
Mr. W. Douglas Trabert  
Jennifer L. Richter, Esq.  
Mr. Michael Specchio



May 25, 1995

**ITFS SETTLEMENT - WEST PALM BEACH, FL**

**I. The parties.**

- A. Two ITFS entities have licenses or pending applications for all ITFS channels plus the E and H channels.
  - 1. School Board of Palm Beach County (the "District").
  - 2. Florida Atlantic University ("FAU").
- B. People's Choice TV, Inc. ("PCTV"), conditional licensee of unconstructed E group MMDS facility.
- C. Wireless Broadcasting Systems of America, Inc. ("WBSA"), an established wireless cable television operator with operating systems in several markets around the country, is developing the West Palm Beach market.

**II. Current situation in West Palm Beach area.**

- A. Multiple ITFS stations on all channel groups, operating from different locations. Some stations used as repeaters or relays.
- B. E and H channels occupied by grandfathered ITFS facilities, preventing their use for commercial service. As a result, no MDS/MMDS facilities are operating in the area.
- C. FAU application for D group channels mutually exclusive with PCTV/WBSA's proposal to displace the District's E group facility to the D group.

**III. Proposed settlement.**

- A. Resolves mutually exclusive applications for D group channels through a market-wide channel reallocation and collocation plan.
- B. Provides for the migration of grandfathered E group ITFS facility to channels D1-D2 so that PCTV's E group MMDS station can be constructed and placed into operation.
- C. Eliminates grandfathered H channel ITFS facility by providing for assignment of the channels to WBSA. H channels will then be used for MDS service.
- D. Allows for the operation of a wireless cable television system serving the West Palm Beach area, to provide competition to franchised cable systems and video programming to homes not passed by cable.

- IV. Timing issues. To minimize educational disruption, the parties plan to make the transition to the collocated system during the ITFS parties' winter breaks, which coincide beginning December 18, 1995. To allow time for construction, action on the applications is requested by November 1, 1995.

---

School Board  
William D. Wallace, Esq.  
Crowell & Moring  
(202) 624-2807

Florida Atlantic Univ.  
W. Douglas Trabert  
Learning Resources Director  
(407) 367-3690

Wireless Broadcasting Systems  
L. Charles Keller, Esq.  
Pepper & Corazzini, LLP  
(202) 296-0600

## West Palm Beach Settlement

### Applications Necessary to the Settlement

The settlement resolves mutually-exclusive proposals for the D group channels. However, because the ITFS parties' agreement to resolve the MX situation depends upon the market-wide channel reallocation and collocation plan, all of the applications described below are necessary to the settlement and should be exempted from the ITFS cut-off rules pursuant to footnote 47:

Channel Group	Licensee	Call Sign	Nature of Application
A	School Board of Palm Beach County ("District")	KZB-28	Collocate and Increase Power to 50 watts
B	Florida Atlantic University ("University")	WHR-896	Collocate and Increase Power to 50 watts
C	University	WHR-901	Collocate and Increase Power to 50 watts
D	University	BPLIF-920814DB	Reduce channels to D3-D4 only
	District	KHU-90 Displacement Application	Reduce channels to D1-D2 only
			<u>Both:</u> Collocate and increase power to 50 watts
E	District	KHU-90	Migrate to D1-D2
	People's Choice TV, Inc.	WMI841	Collocate and Increase Power to 50 watts (MDS)
G	District	KZB-29	Collocate and Increase Power to 50 watts
H	District	KZB-30	Assign to WBS-WP (MDS); Collocate and Increase Power to 50 Watts

### Other Licenses Included in the Agreement

#### Florida Atlantic University

WLX-269	A1-A4 Palm Beach, Florida	Cancel
WHR-877	A1-A4 Boca Raton, Florida	Cancel
WHR-894	A1-A4 Boca Raton, Florida	Cancel

#### School Board of Palm Beach County

WHR-973	G3 West Palm Beach, Florida	Cancel
WHR-994	G2-G3 West Palm Beach, Florida	Cancel